

REMARKS

Claims 1, 3-7, 10, 11, 13-19 and 100-111 are pending in the above-identified application. Claims 1, 3-7, 10, 11, 13-19 are rejected under 35 U.S.C. §102(b) as being anticipated by Barrio (“Study of the Techniques for Emulation Programming”).

Rejections Based on §102(b)

Simply stated, even if Barrio suggests “dividing a subject code into blocks” and “executing [the blocks] through an emulator,” which Applicants do not concede as explained below, Barrio does not teach or suggest “executing [and] comparing the native machine state … against the emulated machine state” with respect to those same blocks. In other words, however Barrio emulates and tests, there is no suggestion of particular blocks of code being subjected to all the claimed processes in conjunction with each other, i.e. code being divided, emulated and tested block-by-block.

Barrio is also not comparing the results of execution of anything relied upon as blocks of code. The cited portion states:

[T]o properly test a CPU emulator it would mean to generate all possible instructions which can receive the CPU and compare the result in the emulator with the real result. It will also be necessary to test combinations of instructions ...

(p. 24, lines 31-24). Testing each instruction, or even “combinations of instructions,” is not analogous to testing the “blocks of code” and certainly not the blocks of subject code as they are emulated in Applicants’ claimed subject matter. Barrio simply does not describe testing actual code in the manner of the claimed subject matter.

In the Response to Arguments for the current Office Action, dated September 28, 2009, (O.A.), the Examiner cites the following excerpt of Barrio:

The standard definition for emulation is “try to be equal or better than someone or something”. An emulator is thus someone or something who or which emulates someone or something else.

Emulation in computers is the same, to emulate the behaviour of a hardware device in software or with a different hardware, or to emulate the behaviour of a piece of software either with another hardware or software. That is still a too general definition, because you can emulate

from an OS to a sound card. And the techniques used are absolutely different. Emulating a hardware device with another hardware device just has to care about to output the same values than the original hardware for the same input values. That is a task for electronic or VLSI design. But if you are emulating an OS over another OS that is a software problem.

(p. 3, lines 7-8, citing Barrio, §2, ¶¶ 2-3; *emphasis added*). In other words, Barrio specifically states that the definition “try to be equal or better than someone or something” is too general to apply to the emulation of one OS over another. The definition may apply to some situations but it does not seem relevant to the disclosed technology in which the terms “emulation” and “emulator” have very specific meanings to those with skill in the art.

As first pointed out in the Amendment dated July 6, 2009, the code of Barrio relied upon to suggest Applicants’ claimed subject matter correspond to blocks of code, not in the subject code, but rather in the interpreter. In the example in which a case statement translates “OPCODE1” to “opcode1();” “OPCODE2” to “opcode2();” and so on, the interpreter is executing in blocks however the interpreted code is executed one instruction at a time.

In the Response to Arguments section, O.A. states:

None of such words have been pointed out by applicants; while the number of words in the claims exceed the numbers of words from p. 4 through p. 18 in the specification. There are a lot of words in the claims that are not in the specification; thus, the words in the claims admit the conformity rather than address the patentability.

(p. 4, lines 21-25). Applicants submit that the original claims are considered a part of the Specification and the standard that “all words in a claim must be considered in judging the patentability of that claim against prior art.” (*Id.*, citing *In re Wilson*, 424 F.2d 1382, 1385; 165 U.S.P.Q. 494, 496 (CCPA 1970)) does not include any exception on which the O.A. seems to rely. Simply stated, Applicants believe that the cited art fails to meet this standard. For the reasons above, claims 1, 3-7, 10, 11, 13-19 and 100-111 are allowable over the cited art. In addition to the reasons stated above, claims 3-7, 10, 11, 13-19, 101-105 and 107-111 are allowable because they each depend upon one of the allowable

independent claims. Therefore, Applicants respectfully request withdrawal of the §102(b) rejections of claims 1, 3-7, 10, 11, 13-19.

CONCLUSION

In light of the amendments and remarks made herein, Applicants submit that all pending claims are allowable and earnestly solicits notice thereof. Applicants are not conceding in this application that the unamended claims are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution of the allowable subject matter. Applicants respectfully reserve the right to pursue these and other claims in one or more continuation and/or divisional patent applications. It is believed that no fees are due with the filing of this Amendment/Response. However, should any fees be due, the Commissioner is hereby authorized to charge such fees to the deposit account of IBM Corporation, Deposit Account No. 09-0447.

Respectfully submitted,

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